UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN RE MOTION FOR CIVIL CONTEMPT BY JOHN DOE	**12 MC 557 (BMC)** **DECLARATION OF ROBERT S. WOLF IN SUPPORT OF ORDER TO SHOW CAUSE** **FILED UNDER SEAL**

STATE OF NEW YORK) SS:
COUNTY OF NEW YORK)

I, ROBERT S. WOLF, declare the following to be true and correct under the penalties of perjury:

1. I am a member of the Bar of this Court and a partner at the law firm of Moses & Singer LLP. My firm represents John Doe[1], movant in the above-referenced action. The facts set forth herein are based on the documents on file with this Court and others that are attached to this Declaration.

2. I respectfully submit this Declaration and the attached exhibits in support of the accompanying Order To Show Cause why Richard Roe[2] and Richard E. Lerner, Esq. ("Lerner"), both lawyers, should not be held in contempt of numerous court orders and this matter should not be referred to the United States Attorney's Office for criminal prosecution.[3]

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[1] As "John Doe", through the acts of contempt described herein, is now publicly known to be Felix Sater, John Doe is hereinafter referred to as "Felix Sater" or "Sater".

[2] As "Richard Roe", through the acts of contempt described herein, is now publicly known to be Frederick M. Oberlander, Esq., Richard Roe is hereinafter referred to as "Frederick Oberlander" or "Oberlander".

[3] As the Court stated at the outset of this case, "there are limitations in the context of civil contempt with regard to the remedy sought. It is true that if there is a civil contempt, the movant is entitled to recover their attorneys' fees, but so what. If what is being sought here is to stop violations, I think we can all be assured, based upon the conduct of Mr. Roe and Mr. Lerner, that the attorneys' fees incurred in this motion aren't going to do anything. Because it is entirely possible, although I have formed no conclusion, that there has indeed been a criminal contempt here, I am referring the matter for

3. At the hearing that took place on October 24, 2014, the Court asked counsel for Sater to submit this Declaration and Order to Show Cause. Specifically, the Court requested an Order to Show Cause that is "the equivalent of a charging instrument in that it sets forth each act to date, and then it has the evidentiary support behind that; and if one of the things that Mr. Sater's attorneys want me to do is refer the matter again for criminal investigation and/or prosecution, as the U.S. Attorney deems appropriate, whether to the Eastern or the Northern District, that can be requested in the order to show cause." Transcript of 10/24/2014 Hearing before J. Cogan, 13:21 – 14:3 (Ex. B).

4. In addition to the below-enumerated acts of contempt, Oberlander and Lerner were recently admonished by Magistrate Judge Maas in the case *Kriss et al. v. Bayrock Group, LLC, et al.*, 10 Civ. 3959 (LGS) (FM) (S.D.N.Y.) ("*Kriss I*"). In his Report and Recommendation of January 14, 2015, attached hereto as Exhibit C, Judge Maas wrote that Oberlander acted as "some sort of self-appointed inspector general", and found "unrefuted evidence that [Oberlander] improperly obtained sealed documents and, in all likelihood, other confidential materials, including copies of Bayrock's attorney-client communications, prior to commencing suit." Exhibit C at 12, 20. Judge Maas ultimately recommended that Judge Schofield strike over 300 paragraphs of the Plaintiff's First Amended Complaint because those paragraphs impermissibly relied on sealed and other confidential information improperly obtained by Oberlander.

5. As detailed below, Oberlander and Lerner engaged in not less than thirteen (13) separate acts of contempt to date.

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criminal prosecution to the United States Attorney. That, to me, is the proper mechanism for adjudicating whether a contempt of the injunctive provisions themselves, not mere background recitals, has occurred." Transcript of 2/27/2012 Hearing before J. Cogan in 98-CR-1101, 9:12-25 (Ex. A).

[redacted]

[redacted]

Contempt No. 2: Intentionally Disclosing Sealed Information to *The New York Times*

9. As discussed in the letter of Nader Mobargha, dated February 10, 2012 (98-CR-1101, ECF 132; Ex. F), in February 2012, Oberlander and Lerner disclosed sealed information, including the true identity of Oberlander, to *The New York Times*, in knowing and willful violation of the Summary Order, which expressly enjoined Oberlander and Lerner from disclosing Oberlander's true identity. This act resulted in *The New York Times* publishing an article on February 6, 2012 entitled "By Revealing Man's Past, Lawyer Tests Court Secrecy," a copy of which is attached hereto as Exhibit G.

10. In the Court of Appeals' Summary Order of February 14, 2011 (the "Summary Order"; Ex. H), the Second Circuit expressly enjoined Oberlander and his counsel from disclosing Oberlander's true identity:

> Richard Roe is an attorney at law whose identity is known to all participants in this litigation and who has been given the name 'Richard Roe' as a legal placeholder because the disclosure of his true identity in this litigation context may, for the time being, lead to the improper disclosure of the materials at issue.

(emphasis added). *See* Ex. H, at 2:12-15.

11. The Court of Appeals' use of the alias "Richard Roe" in the caption and throughout the proceeding is an order that Oberlander's identity should remain under seal, just as the use of the alias "John Doe" prohibits unsealing Sater's identity – especially to a reporter for *The New York Times*, an internationally disseminated newspaper.

12. This injunction was at the front and center of the Summary Order, immediately following the central injunction in the case, which enjoins "dissemination by [any] party, their…attorneys, and all who are in active concert or participation with them, of materials placed under seal…" *Id.* at 2:8-11. Moreover, apparent throughout this complex civil, criminal and appellate litigation, the purpose of using "Richard Roe" instead of his true name was to protect Sater. As several courts have found, revealing certain information to the public, including the identities of other parties, could pose a grave threat to the life and safety of Sater and his family.

[redacted].

14. However, in giving an interview to *The New York Times* in which they revealed their identities and posed for a photograph with a caption identifying them by name, Oberlander and Lerner ignored Judge Cabranes' orders and their own statements, and violated the Summary Order.

15. These actions were willful and contumacious, and are part of a pattern of willful violations of Court orders. From the outset of this litigation, Oberlander has been threatening to disseminate sealed information about Sater to the public and the press. As early as November 9, 2010, in a letter to Sater's counsel, Oberlander made his threat explicit, and showed his contempt for any attempts by the courts to enjoin him,:

> If you wish Doe's activities lawfully kept quiet to any extent, stand still, stop filing motions and get out of the way so Plaintiffs can try to resolve the case before everything uploads to PACER and goes public. The only way to try to prevent worldwide notoriety will be a globally stipulated sealed confidentiality order accompanying a global settlement. No prior restraint was ever possible and thanks to your litigation in the EDNY and what it revealed and the transcripts thereof, all you have accomplished now is to guarantee massive public interest in the cover-up not only of the Doe conviction but the super sealed files and the evasion of mandatory restitution of the [dollar amount] (give or take) that Plaintiffs can allege Doe took out of [the company] and the wrongful concealment of the [dollar amount and cause of action] chose in action available against Doe, concealments themselves RICO predicates, which by definition make all these matters of public interest so beyond any First Amendment threshold as to make silly any attempt to enjoin.

See Ex. J, Redacted letter from F. Oberlander to B. Herman, dated November 9, 2010, ¶ 3 (emphasis added).

16. Oberlander further threatened to put Sater's sealed information "on the front pages everywhere, including New York, Iceland, Turkey, and Khazakhstan..." *Id.* at ¶ 5. His threats continued: "If this case is not settled quickly, it will surely go viral. If you obstruct a settlement instead of helping get there, everything will go public with clockwork inevitability. This is not a threat, it is mathematics. And it is certain." *Id.* at ¶ 6.

17. Staying true to his threats and his careless past conduct of publicly filing sealed information, Oberlander decided to reveal his identity to a national newspaper in violation of the Summary Order.

Contempt No. 3: Disclosing Sater's Identity and His Conviction to *The New York Times*

18. As discussed in the letter of Nader Mobargha, dated March 1, 2012 (98-CR-1101; Ex. K), in February 2012, Oberlander and Lerner disclosed a 2000 press release, which confirmed Sater's conviction and revealed Sater's identity, to a *New York Times* reporter. This was in knowing and willful violation of three separate orders: (a) the Summary Order, which

prohibited disseminating sealed documents from Sater's criminal proceeding (Ex. H); (b) Your Honor's May 13, 2011 Order (the "May 13th Order"), which prohibited extrapolation from sealed documents (Ex. L); and (c) the Second Circuit's February 10th Order, which enjoined all parties from disseminating or distributing documents filed in the course of the appeal, or revealing the contents thereof, to members of the public or the media (Ex. E).

19. The references in *The New York Times* article (Ex. G) show that Oberlander used his knowledge of nonpublic, sealed information – namely, his knowledge of Sater's identity and all legal proceedings that Sater is involved in – to "connect the dots" for *The New York Times* reporter. *See* May 13th Order (Ex. L) at 2 (forbidding "extrapolation from sealed information… because it could easily be... tainted.").

20. From the article, it appears that Oberlander informed the reporter that all the following legal proceedings were connected: (i) Sater's underlying criminal proceeding before Judge Glasser; (ii) Oberlander's pending civil RICO action in the Southern District of New York; (iii) Sater's Southern District action against Joshua Bernstein, the thief who stole Sater's sealed and confidential documents and gave them to Oberlander; (iv) the June 21, 2010 and July 20, 2010 unsealed proceedings before Judge Glasser; and (v) the appeals taken to the Court of Appeals.

21. After connecting all the legal proceedings for the reporter, Oberlander then revealed Sater's identity in these proceedings by referring the reporter to the 2000 press release which identifies Sater by name. The lethal combination of referring to the legal proceedings – especially the mid-2010 proceedings in which sealed documents concerning Sater's cooperation were openly discussed, and the press release identifying Sater by name – is an official confirmation that Sater cooperated with the government.

22. The Court of Appeals' February 10th Order (Ex. E) expressly forbids anyone from disclosing the contents of "any documents filed in this appeal." The February 10th Order makes no distinction between private and public documents. In addition, it specifically forbids Oberlander from disclosing these documents or their contents to "any member of the media." Consequently, by disclosing the contents of The Joint Appendix, which was filed under seal, Oberlander violated the Court of Appeals' February 10th Order.

Contempt No. 4: Disclosing Sealed Information to *The Miami Herald*

23. As described in the letter from Nader Mobargha to this Court, dated March 23, 2012 (98-CR-1101; Ex. M), in March 2012, Oberlander and Lerner disclosed Sater's identity and shared sealed papers, including papers filed under seal with the United States Supreme Court, to *The Miami Herald*, in knowing and willful violation of the Summary Order (Ex. H), the May 13th Order (Ex. L), and the Court of Appeals' December 20, 2011 Order (the "December 20th Order") (Ex. N), which enjoined the disclosure of docket entries and underlying documents that reference Sater's cooperation with the government. This resulted in reporters from *The Miami Herald* writing a letter to Chief Judge Amon on March 8, 2012, in which the reporters request the unsealing of the dockets of "John Doe" and "a Felix Sater". (Ex. O).

24. Oberlander or Lerner - or most likely both – clearly connected the dots for these reporters and informed them that "John Doe" in the sealed proceedings is in fact "Felix Sater". Oberlander and Lerner no doubt accomplished this by first pointing the reporter to the obscure 2000 press release in the Congressional Record, which inadvertently disclosed Sater's conviction and his true identity. Using their non-public information of matters under seal, they then connected this press release to the sealed proceedings in the Eastern District of New York and before the Court of Appeals, where the legal placeholder "John Doe" was used. While Your Honor did hold that "information available to the public was not covered by the Second Circuit's

Injunction" (*see* Ex. L, May 13th Order), pointing the reporter to a public document revealing Sater's real identity, while simultaneously, with a wink, referring the reporter to sealed proceedings where the legal placeholder "John Doe" is used, is as good as telling the reporter outright that "John Doe" is "Felix Sater".

Contempt No. 5: Providing Information From Sealed Documents And Information Regarding Sater's Cooperation To *The Miami Herald*

25. In addition to disclosing Sater's identity to *The Miami Herald* reporters, as described in the letter from Nader Mobargha to this Court dated March 23, 2012 (Ex. M), Oberlander and Lerner gave reporters a sealed letter from the case *U.S. v. Lauria*, 98 CR 1102 (ILG), that confirmed Sater's cooperation with the government. Oberlander and Lerner have repeatedly argued in numerous filings that this sealed letter is already public – due to its inadvertent, temporary unsealing – and have sought to disseminate and use it. Notwithstanding Oberlander and Lerner's arguments – all of which were rejected by the Court of Appeals – the sealed letter is currently under seal, and therefore, is unquestionably subject to the Eastern District of New York and Court of Appeals' sealing orders. As described in the letter from Nader Mobargha dated July 10, 2012 (Ex. P), this disclosure resulted in the *Miami Herald* publishing an article on July 1, 2012 entitled "Trump Tower Promoter's Criminal Record Was Concealed By Feds." (Ex. Q).

26. Oberlander and Lerner's dissemination of the sealed letter to *The Miami Herald* is the clearest violation of the Court of Appeals' injunction to date. The letter not only mentions Sater by his real name, but it also reveals his cooperation with the government. *See* December 20th Order (Ex. N), at p. 6 (enjoining the disclosure of docket entries or underlying documents "that reference John Doe's cooperation with the government").

Contempt No. 6: Disclosing Sealed Information to *Newsweek*

27. As described in the letter from Nader Mobargha to this Court, dated May 1, 2012 (ECF No. 20; Ex. R), in May 2011, Oberlander and Lerner disclosed Sater's identity and content contained in the sealed complaint in *Kriss I* to *The Daily Beast*, a *Newsweek* affiliate, in knowing and willful violation of the Summary Order and the May 13th Order.

28. The *Newsweek* article mentions Sater by name, refers to him as a cooperator, and refers directly to the contents of the sealed complaint in *Kriss I*. As they have done with other reporters over the years, Oberlander and Lerner also connected the dots for the reporter by using their knowledge of sealed and confidential information to assist the reporter in drawing inferences that the reporter may not have drawn on his own. As with their disclosures to *The Miami Herald* and *The New York Times*, Oberlander and Lerner violated both the Summary Order (Ex. H) and the May 13th Order (Ex. L) in their disclosures to the *Newsweek* reporter. *See* May 13th Order (Ex. L) at 2 ("[E]xtrapolation from sealed documents would not be permitted because it could easily be combined with and thereby tainted by Oberlander's knowledge of non-public, sealed information.").

Contempt No. 7: Publicly Disseminating Sealed Information
Through the Filing of a Supreme Court Petition

29. As described in the letter from Michael P. Beys to this Court, dated September 7, 2012, (ECF No. 47; Ex. S), on May 10, 2012, Oberlander and Lerner filed a petition with the United States Supreme Court, and made a motion seeking an order directing the docketing and public availability of the petition in redacted form. Thereafter, on July 9, 2012, Oberlander and Lerner publicly filed a "redacted" petition with the Supreme Court, and circulated the petition to various media publications, in direct violation of the Summary Order, which prohibited them

from revealing in *any court* material subject to a sealing order, and *specifically* prohibited them from filing briefs with the Supreme Court.

30. By publicly filing their Petition with the Supreme Court, Oberlander and Lerner knowingly violated the Court of Appeals' injunction which specifically prohibited the public filing of any briefs with the Supreme Court. Oberlander had publicly filed a redacted Supreme Court brief once before, appealing a temporary order issued by the Court of Appeals. In response, the Court of Appeals specifically ordered that all Supreme Court briefs should be filed under seal. *See* Ex. H, the Summary Order.

Contempt No. 8: Circulating the Supreme Court Petition To Various Media Publications

31. After illegally filing their "redacted" Petition, Oberlander and Lerner circulated the Petition to various media publications, in knowing and willful violation of the February 10th Order and Summary Order. It has been publicly available ever since.

Contempt No. 9: Disclosing Sealed Information to *The New York Law Journal*

32. As described in the Letter from Michael P. Beys to this Court, dated September 7, 2012 (ECF No. 47; Ex. S), in or about August 2012, following Oberlander and Lerner's public dissemination of their Supreme Court petition, Oberlander and Lerner made statements to *The New York Law Journal* wherein Oberlander refers to Sater by his true name and discusses sealed information about Sater's underlying criminal case, including information regarding his conviction, cooperation and sentence, in knowing and willful violation of the Summary Order.

33. On August 27, 2012, Judge Glasser held that it would be futile to seal the docket in 98-CR-1101 any longer, and granted an application to unseal the docket. Thereafter, two additional articles were published referring to Sater by his true name. On August 29, 2012, *The New York Law Journal* published an article entitled "Recognizing 'Doe' Is No Longer a Mystery as Court Unseals Record," (Ex. T), and on March 8, 2013, *WiseLawNY* published an article

entitled "Judge Orders Release of Informer's Docket Sheet" (Ex. U). These articles both refer to Sater by his true name and discuss sealed facts from his underlying criminal case, including his conviction, cooperation and sentence, which are now all public. Prior to the article's publication, Oberlander made several statements to *The New York Law Journal*, apparently deciding – unilaterally, once again – that in light of Judge Glasser's order unsealing the docket, the Court of Appeals' Summary Order no longer applies to him.

Contempt No. 10: Publicly Filing Sealed Information
in an Unrelated, Unsealed Court Docket

34. As described in the Letter from Michael P. Beys to this Court, dated September 25, 2012 (ECF No. 51; Ex. V), on September 21, 2012, Oberlander and Lerner filed letter briefs and affidavits in unsealed docket number 12-MC-150 (Glasser), which briefs and affidavits clearly concern issues related to this, sealed proceeding.

35. Namely, Oberlander and Lerner publicly filed a Motion for Reconsideration by Oberlander and the accompanying Declaration of Richard Lerner (collectively, the "Motion for Reconsideration") – on the public docket of 12 MC 150 (ILG), a proceeding before Judge Glasser. However, their Motion for Reconsideration concerns Your Honor's August 16, 2012 Order granting Wilson Elser's motion to withdraw as counsel in these contempt proceedings; it does not concern any order granted by Judge Glasser.

36. Oberlander and Lerner chose not to file their frivolous Motion with this Court because these proceedings are under seal. Lawfully filing submissions under seal do not serve Oberlander and Lerner's purposes. They intentionally filed their frivolous motion with the wrong court, in order to further publicize information about Sater and to further undermine the sealing orders they had already violated numerous times.

Contempt No. 11: Providing a Sealed Complaint to *The Washington Times*

37. Following President Obama's nomination of Loretta Lynch for United States Attorney General, Oberlander and Lerner were quoted in *The Washington Times* in an article entitled "Loretta Lynch questioned over secret deal depriving fraud victims of $40M" (Ex. W). In the article, Oberlander discusses sealed information concerning Sater's conviction, cooperation and sentence. The article quotes the Complaint in the case *Kriss, et al., v. Bayrock Group, LLC et al.*, 13 Civ. 3905 (LGS) (FM) ("*Kriss II*"), which Complaint was sealed by Magistrate Judge Maas on May 29, 2014. Given that the Complaint in *Kriss II* is not publicly available, it is clear that Oberlander and/or Lerner impermissibly provided the sealed Complaint to the *Washington Times* reporter, in violation of Judge Maas' sealing order, and the Summary Order, which enjoins "dissemination by [any] party, their…attorneys, and all who are in active concert or participation with them, of materials placed under seal…" Ex. H at 2:8-11.

[redacted]

Contempt No. 12: Intentionally Disclosing Sealed Information to *The National Review*

39. In January 2015, in the days leading up to the Senate Judiciary Committee Confirmation Hearings of Attorney General-nominee Loretta Lynch, Oberlander and Lerner provided information contained in sealed complaints to a reporter for *The National Review*, for an article entitled "Loretta Lynch's Secret Docket" (Ex. X). The article refers to allegations contained in a "recent lawsuit" filed by Oberlander and Lerner, but the article does not name the plaintiff in the suit. Based on the allegations cited in the article, the suit in question is almost certainly either *Kriss I* or *Kriss II*, both of which complaints are sealed. Just as they did with *The Washington Times* reporter, Oberlander and/or Lerner impermissibly provided the sealed Complaint to the reporter for *The National Review*. Such disclosure is in violation of the sealing orders in those cases, and the Summary Order, which enjoins "dissemination by [any] party, their…attorneys, and all who are in active concert or participation with them, of materials placed under seal…" Ex. H at 2:8-11.

Contempt No. 13: Intentionally Disclosing
Sealed Information in an Article in *The Hill* Newspaper

40. On January 28, 2015, the first day of the Senate Judiciary Committee Confirmation Hearings of Attorney General-nominee Loretta Lynch, Oberlander and Lerner published an article in the newspaper *The Hill* entitled "Questions for Loretta Lynch on Secret Dockets". (Ex. Y). In the article, which was published online, Oberlander and Lerner refer to Sater by his true name and discuss sealed information concerning his conviction, cooperation and sentence, in knowing and willful violation of the Summary Order.

41. Ms. Lynch has time and again confirmed the propriety of her actions with respect to Sater's case, his extraordinary cooperation, and especially his unprecedented assistance regarding matters of national security. Additionally, she has emphasized that every court, right

up to the United States Supreme Court, has rejected all claims of impropriety with respect to Sater's case.

Conclusion

42. As the foregoing makes clear, Oberlander and Lerner have engaged in repeated efforts to disclose sealed material in violation of several court orders. These reckless acts not only endanger Sater, who risked his life to provide high-level cooperation, but undermine the efforts of our government to protect its citizens. Moreover, they dissuade potential cooperators from providing the kind of valuable assistance that Sater provided.

43. These acts are a continuation of the activity cited in Sater's previous Order to Show Cause, which led this Court to refer Oberlander and Lerner for criminal prosecution to the United States Attorney's Office for the Eastern District of New York. Oberlander and Lerner's actions are willful, reflect a wanton disregard for the Orders of this and other Courts, and are therefore clearly contumacious.

44. Accordingly, we respectfully request that this Court issue the following Orders against Oberlander and Lerner:

(a) holding them in civil contempt;

(b) referring this matter for criminal prosecution;

(c) imposing leave-to-file restrictions and requirements of notice to other federal courts pursuant to the Court of Appeals' Order;

(d) prohibiting them from filing any further actions without the consent of this Court;

(e) imposing leave-to-file restrictions and requirements of notice to other state courts;

(f) prohibiting them from filing any further state actions against Sater;

(g) awarding monetary sanctions against Oberlander and Lerner, including requiring them to pay Sater's attorney's fees and costs that Sater has incurred, or will incur, as a result of this action;

(h) such other and further relief as this Court deems just and appropriate.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 20, 2015
New York, New York

/S/

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